

Date of Hearing: April 20, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 2234 (Robert Rivas) – As Amended April 6, 2022

SUBJECT: Planning and zoning: housing: postentitlement phase permits

SUMMARY: Requires public agencies to post information related to post entitlement phase permits for housing development projects, process those permits in a specified time period depending on the size of the housing development, and establish a digital permitting system if the local agency meets a specific population threshold. Specifically, **this bill:**

- 1) Requires public agencies to compile one or more lists that specify in detail the information that will be required from any applicant for a postentitlement phase permit for a development and to post that information on their internet website by January 1, 2024.
- 2) Requires public agencies to post on their internet website an example of an ideal application and an ideal set of postentitlement phase permits for an unspecified amount of housing development projects in the jurisdiction by January 1, 2024.
- 3) Requires large jurisdictions, as defined to require postentitlement phase permits to be applied for, completed and stored through a publicly available process on its website by January 1, 2024.
- 4) Requires large jurisdictions to accept applications for permits and related documentation by electronic mail until a digital application system is established, as specified.
- 5) Requires public agencies to determine whether an application for a postentitlement phase permit is complete, and provide written notice to the applicant of that determination no later than 15 calendar days after the agency receives the application.
- 6) Requires a public agency that determines that a postentitlement phase application is incomplete to provide the applicant with a list of incomplete items and a description of how to make the application complete. Restricts the incomplete items a public agency can identify to items the local agency specifies are required for a postentitlement phase application to be deemed complete.
- 7) Authorizes an applicant to resubmit an application that is deemed incomplete and specifies that a local agency may not require the application to include items that were not identified as missing in the notice informing the applicant that the previous application was incomplete.
- 8) Specifies that public agencies must determine whether a resubmitted application for a postentitlement phase permit is complete, and provide written notice to the applicant of that determination no later than 15 days after the agency receives the application
- 9) States that, if a local agency does not make a timely determination on an original application or a resubmitted application, the application shall be deemed complete.

- 10) Requires public agencies to approve or deny a postentitlement phase permit that the agency has determined is complete within 30 days for residential developments that include 25 units or fewer, and specifies how that information must be communicated to the applicant.
- 11) Requires public agencies to approve or deny a postentitlement phase permit that the agency has determined is complete within 60 days for residential developments that include 25 units or more, and specifies how that information must be communicated to the applicant.
- 12) Specifies that the time limits for denying or approving postentitlement phase permits do not apply if the public agency makes a written finding based on substantial evidence in the record that the postentitlement phase permit may have a specific adverse impact on public health or safety and that additional time is necessary to process the application.
- 13) Provides that a public agency that finds a complete application is defective or deficient may provide the applicant with a list of items that are defective or deficient and a description of how the application can be remedied, specifies that this information must be transmitted to the applicant when the agency denies the application.
- 14) Authorizes an applicant to resubmit a postentitlement phase permit that is denied based on a defect or deficiency and specifies that the resubmitted application is subject to the same timeframes applicable to an original complete application.
- 15) Requires local agencies to provide a process for applicants to appeal a determination that an application is not complete as well as a process to appeal a denial of a complete application, as specified.
- 16) Specifies that a public agency shall act on an appeal for residential developments with 25 units or fewer within 60 calendar days, as specified.
- 17) Specifies that a public agency shall act on an appeal for residential developments with 25 units or more within 90 calendar days, as specified.
- 18) Provides that a failure by a public agency to meet the time limits provided in the bill is a violation of the Housing Accountability Act.
- 19) Provides that the bill does not place limitations on the amount of feedback a public agency may provide or the revisions a public agency may request of an applicant.
- 20) Provides that public agencies must comply with the standards established in this bill as well as the standards established by the streamlined approval process established pursuant to SB 35 (Wiener), Chapter 366, Statutes of 2017 for projects that are eligible for the streamlined approval process created by that bill.
- 21) Provides that an applicant and public agency may mutually agree to an extension of any of the time limits provided by the bill, but precludes a local agency from requiring an extension as a condition of accepting or processing a postentitlement phase permit, unless the waiver is necessary for the purposes of concurrent processing of related approvals or environmental review of the residential development project.

22) Specifies that the provisions of the bill do not apply to the planning permits, entitlements and other permits or reviews subject to the Permit Streamlining Act (PSA), or permits issued by the following entities:

- a) The California Coastal Commission.
- b) Special districts.
- c) Utilities that are not owned and operated by public agencies.

23) Defines the following terms for the purposes of the bill:

- a) "Large jurisdictions" means a county with a population of more than 250,000 as of January 1, 2019, and any city located within that county.
- b) "Public agency" means any county, city, or city and county.
- c) "Postentitlement phase permit" includes all nondiscretionary permits and reviews filed after the discretionary entitlement process has been completed that are required or issued by the public agency to begin a development that is intended to be at least two-thirds residential, including, but not limited to, all of the following:
 - (1) Building permits, and all inter-departmental review required for the issuance of a building permit.
 - (2) Permits for minor or standard off-site improvements.
 - (3) Permits for demolition.
 - (4) Permits for minor or standard excavation and grading.
 - (5) A permit or review listed by a public agency as required by this bill.

Specifies that a public agency may identify a threshold by ordinance for determining whether a permit constitutes a minor or standard permit for the purposes of the bill.

- d) "Specific adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

24) Declares that access to affordable housing is a matter of statewide concern and that the provisions of the bill therefore apply to all cities, counties and cities and counties, including charter cities, counties and cities and counties.

25) Provides that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to current law governing state mandated local costs.

EXISTING LAW:

- 1) Allows a city or a county to “make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws.” It is from this fundamental power (commonly called the police power) that cities and counties derive their authority to regulate behavior to preserve the health, safety, and welfare of the public, including land use authority.
- 2) Requires, pursuant to Planning and Zoning Law, every city and county to adopt a general plan that sets out planned uses for all of the area covered by the plan, and requires the general plan to include seven mandatory elements, including a land use element.
- 3) Requires major land use decisions by cities and counties, such as development permitting and subdivisions of land, to be consistent with their adopted general plans.

FISCAL EFFECT: This bill is keyed fiscal and contains a state-mandated local program.

COMMENTS:

- 1) **Author’s Statement.** According to the author, “Local governments approve housing developments with the expectation that, with their work done, they will soon see the creation of much-needed housing. However, there is no standardized process or timeline to review the array of post-entitlement “building” permits. In fact, many projects spend months or even years waiting for building permit approvals – despite the fact that the housing development has been reviewed and approved. Cities, counties, and applicants often struggle to complete the building permit process in a timely manner. Developers do not always provide all the required information to the city when applying for the permits, and cities do not always provide timely, necessary feedback to applicants. These delays of months or years increase the costs of the projects and slow overall housing production, which exacerbates California’s housing crisis. Prior legislation, the Permit Streamlining Act, does not resolve this issue because it does not apply to building permits.

“AB 2234 will improve communication systems by requiring local jurisdictions to publish an online checklist for applications to be deemed complete and maintain this checklist online for the public. An ideal application sample must be included in this checklist, which developers can then use as a reference. Local jurisdictions with a population of 250,000 or larger will also be required to update the status of the application online, including anything that is required from the developer. AB 2234 will apply to nearly all post-entitlement, residential permits issued by an agency under the control of the local jurisdiction, excluding utilities, special districts, and the Coastal Commission. Examples of permits subject to AB 2234 include building permits and interdepartmental review necessary to issue building permits; permits for excavation, site remediation, and demolition, etc. The bill does not apply to the approval of project plans nor entitlements, including the CEQA process.”

- 2) **California Housing Crisis.** California faces a severe housing shortage. In its most recent statewide housing assessment, HCD estimated that California needs to build an additional 100,000 units per year over recent averages of 80,000 units per year to meet the projected need for housing in the state. A variety of causes have contributed to the lack of housing

production. Recent reports by the Legislative Analyst's Office (LAO) and others point to local approval processes as a major factor. They argue that local governments control most of the decisions about where, when, and how to build new housing, and those governments are quick to respond to vocal community members that may not want new neighbors. The building industry also points to California Environmental Quality Act (CEQA) review as an impediment, and housing advocates note a lack of a dedicated source of funds for affordable housing.

- 3) **Planning for and Approval of Housing.** Planning for and approving new housing is mainly a local responsibility. The California Constitution allows cities and counties to “make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws.” It is from this fundamental power (commonly called the police power) that cities and counties derive their authority to regulate behavior to preserve the health, safety, and welfare of the public – including land use authority. Cities and counties enforce this land use authority through zoning regulations, as well as through an “entitlement process” for obtaining discretionary as well as ministerial approvals.

The scale of the proposed development, as well as the existing environmental setting determine the degree of local review that occurs. For larger developments, the local entitlement process commonly requires multiple discretionary decisions regarding the subdivision of land, environmental review per CEQA, design review, and project review by the local agency's legislative body (city council or county board) or by a planning commission, the legislative body has delegated to.

Navigating through the various stages of local approval requires developers to invest time and resources early in the development process. This creates a certain degree of risk for developers who must bear any costs associated with navigating the local approval process long before they can realize the profits typically associated with a completed development

- 4) **The Permit Streamlining Act.** The PSA requires public agencies to act fairly and promptly on applications for development proposals, including housing developments. Public agencies must compile lists of information that applicants must provide and explain the criteria they will use to review permit applications. Public agencies have 30 days to determine whether applications for development projects are complete; failure to act results in an application being "deemed complete." However, local governments may continue to request additional information, potentially extending the time before the clock begins running.

Once a complete application for a development has been submitted, the Act requires local officials to act within a specific time period after completing any environmental review documents required under the CEQA. Specifically, local governments must act within (1) 60 days after completing a negative declaration or determining that a project is exempt from review, or (2) 180 days after certifying an environmental impact report (EIR). If the local government fails to approve or disapprove the application in the applicable time period, the application is deemed granted, and the applicant may file suit in state court to order the local government to issue the permit.

- 5) **Non-discretionary Postentitlement Permits.** The PSA establishes standards for local agencies and other public agencies to approve development proposals. The PSA establishes timelines for agencies to determine whether a proposal is complete and timelines for approving or denying a development proposal that is deemed complete. Once a development

proposal is approved by the local agency, the developer is still required to submit a range of nondiscretionary permits to the local agency for approval. This includes building permits and other permits related to the physical construction of the development proposal. The timelines established in the PSA do not apply to these nondiscretionary permits.

Essentially, the PSA applies to the discretionary approval phase of a development review process, this is the phase where the local agency, in its discretion, decides whether or not it approves of the concept outlined in the development proposal. Because the local agency is exercising discretion, these approval decisions are subject to CEQA. Once the development proposal is approved by the local agency, the next phase of review involves the ministerial review of objective permits associated with the development proposal that ensure the proposal is compliant with state and local building codes and other measures that protect public health, safety and the environment. Generally, once a local agency has invested the time and effort to approve a development proposal, there is an incentive for the agency to process the ministerial phase of permits in a timely fashion. Local agencies may self-impose processing timelines for these permits but there is no statutorily established maximum timeline for this review in statute.

- 6) **Bill Summary.** This bill replicates elements of the PSA that apply to the discretionary development approval process to the non-discretionary postentitlement permit approval process for housing developments. Specifically, this bill borrows from and applies the following concepts in the PSA to non-discretionary postentitlement housing development permits reviewed by local agencies:
 - a) **Information Posting.** The PSA requires public agencies to compile one or more lists that specify in detail the information that will be required from any applicant for a development project. *This bill* requires local agencies to compile one or more lists that specify in detail the information that will be required from any applicant for a postentitlement phase housing development permit for a development, and requires that this information is posted on the local agency's internet website.
 - b) **Deemed Complete Timeframe.** The PSA requires public agencies to determine if a development proposal is complete within 30 days and to provide specified feedback to an applicant if the proposal is not complete. *This bill* requires public agencies to determine whether an application for a postentitlement phase housing development permit is complete, and provide specified information to the applicant within 15 days after the agency receives the application.
 - c) **Substantive Review Timeframe.** The PSA requires public agencies to approve or disapprove a development project within a specified timeframe (generally 60-180 days) depending on the type of CEQA review that applies to the development approval and the type of approval conferred by the public agency. *This bill* requires local agencies to review and approve non-discretionary postentitlement housing development permits within 30-60 days depending on the size of the project.

This bill also requires counties that, as of January 1, 2019, had a population of more than 250,000, and any city located within those counties, to establish an online portal for accepting and processing the postentitlement phase permits subject to the bill.

This bill is sponsored by the Housing Action Coalition and the Silicon Valley Leadership Group.

- 7) **Technical Amendments.** The Committee may wish to recommend the following technical amendments. Due to procedural issues, these amendments must be accepted in the Housing and Community Development Committee.
- a) Some aspects of the PSA apply to state and local agencies, which are defined as “public agencies.” Other aspects of the PSA specifically apply to local agencies. This bill also uses the term “public agencies,” but more narrowly defines public agencies as cities and counties, which essentially mirrors the PSA’s definition of local agencies. Given that this bill largely replicates the PSA, it may cause confusion to use a different definition of the term “public agency.” *The Committee may wish to amend the bill to replace the term “public agency” with the term “local agency.”*
 - b) Subdivision (b) Paragraph (2) includes two sentences that modify Paragraphs (1) and (2) of that subdivision. *The Committee may wish to amend the bill to recast the following text from paragraph (2) into a new Paragraph (3):*

“The internet website or electronic mail shall list the current processing status of the applicant’s permit by the public agency. That status shall note whether it is being reviewed by the agency or action is required from the applicant.”
 - c) The bill applies to postentitlement phase permits, which is narrowly defined. However, but Subdivision (b) Paragraph (2) of the bill uses the term “permits,” which is undefined. This could be interpreted to apply certain provisions of this bill more broadly. *The Committee may wish to amend (b)(2) to use the more specific term “postentitlement phase permits,” which is defined in the bill.*
 - d) The term “residential developments,” is used throughout the bill. Recent legislation related to the permitting of housing typically uses the term “housing developments” or “housing development projects.” *The Committee may wish to amend the bill to replace the term “residential developments” with the term “housing development projects.”*
 - e) Subdivision (e) Paragraph (2) referred to a list and description “required” in paragraph (1). However, paragraph (1) is permissive and does not “require” the preparation of a list. *The Committee may wish to amend the bill to make the language in (e)(2) accurately reflect the provisions of (e)(1).*
- 8) **Arguments in Support.** The Silicon Valley Leadership Group writes in support, “AB 2234 is a straightforward solution which will help prevent the unnecessary delays and added project costs in building critical housing development projects in California by establishing a framework for obtaining post-entitlement permits.”
- 9) **Arguments in Opposition.** The California State Association of Counties writes in opposition, “While we appreciate and share your desire for prompt review and approval of post-entitlement permits, AB 2234 would create practical and policy concerns impairing local government’s ability to effectively review applications and includes unclear definitions that effect its scope. AB 2234 would also impose costly mandates for electronic permitting without providing state funding to offset these costs. Finally, the bill excludes approvals

required by other agencies, including the Coastal Commission and utilities, for reasons that appear to be based in political rather than policy concerns.”

10) **Double-Referral.** This bill is double-referred to the Assembly Committee on Housing and Community Development.

REGISTERED SUPPORT / OPPOSITION:

Support

Silicon Valley Leadership Group [SPONSOR]
Housing Action Coalition [SPONSOR]
Bay Area Council
California Housing Partnership Corporation
California Yimby
Council of Infill Builders
EAH Housing
Fieldstead and Company, INC.
Habitat for Humanity California
Jon Wizard Council Member, City of Seaside
Housing Leadership Council of San Mateo County
Non-profit Housing Association of Northern California (NPH)
San Francisco Bay Area Planning and Urban Research Association (SPUR)
San Jose Chamber of Commerce
Sergio Jimenez City Councilmember City, City of San Jose
Southern California Association of Non-profit Housing (SCANPH)
The Los Angeles Coalition for The Economy & Jobs
The Two Hundred
Zach Hilton City Council Member, City of Gilroy

Opposition

California Building Officials
California State Association of Counties (CSAC)
League of California Cities
Rural County Representatives of California (RCRC)
Urban Counties of California

Analysis Prepared by: Hank Brady / L. GOV. / (916) 319-3958